

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer Information;	)	
	)	
Implementation of the Non-Accounting	)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the	)	
Communications Act of 1934, As Amended	)	
	)	

**COMMENTS OF VARTEC TELECOM, INC.**

VarTec Telecom, Inc. ("VarTec") hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking<sup>1</sup> seeking comment on what methods of customer consent would serve the governmental interests at issue and afford informed consent in accordance with the First Amendment. The Commission also seeks comment on the interplay between section 222 and 272 of the Act in response to a voluntary remand granted by the United States Circuit Court of Appeals for the District of Columbia.

**I. Introduction**

VarTec is an interexchange carrier that provides long-distance services to both residential and business customers, domestically and internationally. VarTec also offers

---

<sup>1</sup> *In the Matter of Implementation of the Telecommunications Act of 1996; Telecommunications Carrier's Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Docket No. 96-115, (2001) ("FNPRM")

local exchange service to its customers in several states. VarTec offers its customers the option of using long distance services without presubscribing to VarTec's service or establishing an account with the company before calling. VarTec, considered a pioneer in "dial-around" long-distance service, actively markets these casual calling options as well as its local service offering through direct mail campaigns. As a result, VarTec relies heavily on the ability to market its services to as many people as possible and believes that an opt-in approval method adopted by the Commission would have dire consequences for VarTec's ability to effectively market its services.

## **II. Discussion**

Specifically, VarTec responds to the Commission's requests in the *FNPRM* for comment, on among other things, the likely difference in competitive harms under opt-in and opt-out approvals. The Commission asks whether it is possible for the Commission to implement a flexible opt-in approach that does not run afoul of the First Amendment, or whether opt-out approval is the only means of addressing the constitutional concerns expressed by the 10<sup>th</sup> Circuit.

VarTec believes that opt-out approval is the only means of effectively addressing the constitutional concerns expressed by the 10<sup>th</sup> Circuit. More specifically, VarTec submits that the opt-out approach promotes competition in the marketplace because it is a more cost effective method of ensuring customer approval. Moreover, opt-out more appropriately advances the government's privacy concerns because consumers can with little effort decide for themselves whether they want their personal information shared among companies. However, VarTec believes that with opt-in approval, most carriers, other than multi-product conglomerates because of their large and varied customer bases,

will never reach critical mass to market their services, which circumvents commercial free speech. This is true simply because the vast majority of consumers are not going to make the extra effort to respond to opt-in approval requests from companies regardless of their privacy interests. As a result, opt-in approval does little to promote competition and permits consumers who are indifferent about the government's privacy concerns to hinder commercial free speech, a more competitive marketplace and ultimately, cheaper prices for other consumers.

The Commission also asked parties to comment on whether there are any other laws or regulatory schemes governing matters similar to CPNI that the Commission might use as an analog. VarTec would direct the Commission to the Fair Credit Reporting Act<sup>2</sup>, which governs the way in which credit-reporting agencies may share information related to a consumer's creditworthiness with nonaffiliated third parties. Clearly, the information contained in a consumer's credit report is just as sensitive, if not more sensitive, than CPNI. However, credit reporting agencies are permitted to sell lists to a host of marketers for purposes related to the extension of credit, and customers are given the opportunity to opt-out of such sharing of their personal information quite effectively. VarTec does not believe that there is any logical reason that telecommunications carriers should be held to a higher standard than credit reporting agencies.

### **III. Conclusion**

WHEREFORE, for the foregoing reasons, VarTec Telecom, Inc. respectfully requests the Commission's consideration of these comments as these matters will significantly impact VarTec Telecom, Inc.'s current business operations.

Respectfully submitted,

/s/ Michael G. Hoffman

Michael G. Hoffman  
Chief Legal Counsel  
VarTec Telecom, Inc.  
1600 Viceroy Dr.  
Dallas, Texas 75235  
(214) 424-1000

/s/ Patricia Zacharie

Patricia Zacharie  
Regulatory Counsel  
VarTec Telecom, Inc.  
1600 Viceroy Dr.  
Dallas, Texas 75235  
(214) 424-1504

---

<sup>2</sup> Fair Credit Reporting Act (FRCA), 15 U.S.C. § 1681 *et seq*